IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 20418 of 2005(E)

PETITIONERS:
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1. **M.PREMA, D/O. THE LATE S.K.MAHADEVAN,**
   AGED 49 YEARS, CHIEF ACCOUNTS OFFICER(OFFICIATING)
   OFFICE OF THE GENERAL MANAGER, BSNL, KOTTAYAM,
   RESIDING AT B-11, STAFF QUARTERS, INDIAN ALUMINIUM
   COMPANY LTD., ALUPURAM, KALAMASSERY-683 104.

2. **K.SURYAKALA, D/O. SRI.K.M.KRISHNA PRABHU**
   AGED 50 YEARS, SENIOR ACCOUNTS OFFICER,
   OFFICE OF THE GM, BSNL, PALAKKAD,
   RESIDING AT KARAKKAT HOUSE, REPUBLIC ROAD,
   NORTH PARAVOOR P.O., PIN-683 513.

3. **P.P.SOMANATHAN,**
   S/O. THE LATE P.V.PADMANABHA SHENOY, AGED 48 YEARS
   ASST.CHIEF ACCOUNTS OFFICER (OFFICIATING),
   OFFICE OF THE PRINCIPAL GENERAL MANAGER, BSNL,
   ERNAKULAM, RESIDING AT VIII/164 A, `NAVADEEP',
   CHERLAI, KOCHI.

4. **R.RADHA RAMAN, W/O. SRI.S.RAMA IYER,**
   AGED 54 YEARS, SENIOR ACCOUNTS OFFICER,
   OFFICE OF DGM, SOUTHERN TELECOM SUB REGION,
   MTCE, BSNL, ERNAKULAM, KOCHI-17, RESIDING AT S-1,
   ARADHANA APARTMENT, MONASTRY ROAD, KOCHI-16.

5. **B.SASIKUMAR, S/O. THE LATE R.B.PILLAI,**
   AGED 44 YEARS, SENIOR ACCOUNTS OFFICER,
   OFFICE OF THE DGM, SOUTHERN TELECOM SUB REGION,
   BSNL, ERNAKULAM, KOCHI-17, RESIDING AT "ROHINI",
   NETTOOR P.O., ERNAKULAM.

6. **METTY POULOSE, D/O.SRI.SEBASTIAN AMBADAN**
   AGED 53 YEARS, ACCOUNTS OFFICER, BSNL,THODUPUZHA,
   RESIDING AT 30/994, VYTTILA, KOCHI-682 019.

7. M.SHYAM KUMAR,
S/O. THE LATE N.MADHAVAN NAIR, AGED 44 YEARS,
SENIOR ACCOUNTS OFFICER, OFFICE OF THE CGM,BSNL,
TRIVANDRUM, RESIDING AT `SREEPADAM', K.P.III/364,
KEERTHI NAGAR, VALLAYANI, NEMAM P.O.,TRIVANDRUM.

8. LAKSHMIKUTTYAMMA,
D/O. THE LATE VELAYUDHA KURUP, AGED 59 YEARS,
ASSISTANT CHIEF ACCOUNTS OFFICER (OFFICIATING),
OFFICE OF C.G.M., BSNL, TRIVANDRUM, RESIDING AT
`ATHIRA', T.C.12/136, PRTA-17, PLAMOODU,
PATTOM P.O., TRIVANDRUM.

9. D.LALITHAMMA, D/O. SRI.P.K.DAMODARAN,
AGED 53 YARS, ASSISTANT CHIEF ACCOUNTS OFFICER
(OFFICIATING), OFFICE OF C.G.M., BSNL, TRIVANDRUM,
RESIDING AT `SAICHAITHANYAM', TC.3/482 (4),
KALLARAMOOLA NAGAR, MUTTADA P.O., TRIVANDRUM.

10. RADHA SASIDHARAN,
D/O. SRI.K.S.GOPALA PILLAI, AGED 56 YEARS,
CHIEF ACCOUNTS OFFICER (OFFICIATING),
OFFICE OF GENERAL MANAGER, TELECOM DISTRICT, BSNL,
TRIVANDRUM, RESIDING AT 410-SANGEETH NAGAR,
THYCAUD P.O., TRIVANDRUM.

11. P.G.RAJAMMA, D/O.V.GOPALAN, AGED 52,
ASST.CHIEF ACCOUNTS (OFFICIATING)O/O.GENERAL
MANAGER, TELE.DIST. BSNL. TRIVANDRUM, R/A.
SREESAKTHI, K.P.R.A.156, MANKULAM MAIN, PATTOM,
TRIVANDRUM 4.

12. R.USHA, D/O.LATE M.RAJAYYAN, 45 YEARS,
ASST.CHIEF ACCOUNTS (OFFICIATING), O/O.GEN.MANAGER
TELECOM DIST. B.SN.L. TRIVANDRUM, R/A.USHUS
POOVAN VILAI, MADICHEL P.O. K.K.DISTRICT,
TAMILNADU.

13. T.VIMALA, D/O.LATE N.BALAKRISHNAN NAIR,
55YEARS, CHIEF ACCOUNTS OFFICER (OFFICIATING) O/O.
GENERAL MANAGER, TELCOME DISTRICT, BSNL,TRIVANDRUM
R/A. HARISREE KARYAM, SREEKARYAM P.O. TRIVANDRUM.

14. G.RAVINDRAN PILLAI, S/O.LATE K.GOPALA
PILLAI, 58 YEARS, CHIEF ACCOUNTS OFFICER(OFFICIAT-
ING), O/O.GENERAL MANAGER, TELECOME DISTRICT, BSNL
TRIVADNRUM, R/A. D-5, BSNL STAFF QUARTERS,
PARUTHIPPARA, TRIVANDRUM.

15. T.C.LAKSHMI BHAI, D/O.LATE T.R. CHIDAMBARA IYER, 47 YEARS, ACCOUNTS OFFICER, O/O. THE CGM, BSNL, TRIVANDRUM, R/A. NANDANAM, TC 28/2800(1) KRAC-10, CHETTIKULANGARA, TRIVANDRUM 1.

16. K.S.VIJAYALAKSHMI, D/O.LATE N.KRISHNAN NAIR, 47 YEARS, ASST.CHIEF ACCOUNTS OFFICER (FA) (OFFICIATING), O.O.CGMT, BSNL, TRIVANDRUM 33, R/A. TC 36/1036, KNRA 19, KAIRALI NAGAR, INCHAKKAL, VALLAKKADAVU POST, TRIVANDRUM 8.

17. RAMANI AMMA C.R. D/O.S.CHELLAPPAN PILLAI 58 YEARS, SR.ACCOUNTS OFFICER (TRA), O/O.PGMT, BSNL, TRIVANDRUM 23, R/A. TC 50/1093, A-19, T.M. NAGAR, THALIYAL, KARAMANA, TRIVANDRUM 2.

18. R.SOMASEKHARA PILLAI, S/O.LATE K.RAMAN PILLAI, 52 YEARS, ASST. CHIEF ACCOUNTS OFFICER (OFFICIATING), O/.O.GENERAL MANAGER, TELECOME DISTRICT, BSNL, THIRUVALLA, R/A. ASWATHY, THAMARAKKULAM, KOLLAM.

19. N.VIJAYAN, S/O.LATE .K.NARAYANAN, AGED 59 YEARS, CHIEF ACCOUNTS OFFICER(OFFICIATING) O/O.THE GENERAL MANAGER, TELECOME DISTRICT, BSNL, KOLLAM R/A. NISHA. TC VIII/1756, MURINJAPALAM, MEDICAL COLLEGE PO. TRIVANDRUM 11.

20. C.GOPALAKRISHNA PILLAI, S/O.V.CHELLAPPAN PILLAI, 53 YEARS, CHIEF ACCOUNTS OFFICER(OFFICIA-TING) O/O.THE GENERAL MANAGER, TELECOM DISTRICT, BSNL, KOLLAM R/A. ARYA POURNAMI, ELAMADU P.O. VIA.AYOOR, KOLLAM DISTRICT.

21. S.MADHAVANNAIR, S/O.R.SIVASANKARA PILLAI 52 YEARS, CHIEF ACCOUNTS OFFICER(OFFICIATING)O/O. THE GENERAL MANAGER, TELECOME DISTRICT, BSNL, KOLLAM, R/A. SREEUSHUS, PRASANTH NAGAR, MEDICAL COLLEGE P.O. TRIVANDRUM.

22. P.B.VENKATESWARAN, S/O.P.V.BALASUBRAMANIAN, 41 YEARS, ASST.CHIEF ACCOUNTS OFFICER (OFFICIATING), O/O.THE GENERAL MANAGER, TELECOM DISTRICT, PALAKKAD, R/A. 3/269(1) `VAISHNAV',KUMARAPURAM, PALAKKAD.

23. CHANDRABHANU.M.G., S/O. THE LATE P.PADMANABHAN, AGED 51 YEARS, CHIEF ACCOUNTS OFFICER(OFFICIATING), OFFICE OF GENERAL MANAGER, TELECOM DISTRICT, ALLEPPEY, RESIDING AT `THUSHARA' THATHAMPALLY P.O., ALLEPPEY-688 013.

24. GEETHA VIJAYAN, D/O.THE LATE PADMANABHA PILLAI, AGED 51 YEARS, CHIEF ACCOUNTS OFFICER (OFFICIATING) OFFICE OF GENERAL MANAGER, TELECOM DISTRICT, ALLEPPEY, RESIDING AT `SOUPARNIKA', 28/1475-A, K.P.VALLON ROAD, KADAVANTHARA, KOCHI-20.

25. M.MURALEEDHARAN, S/O.SRI.K.GOPALAN, AGED 45 YEARS, CHIEF ACCOUNTS OFFICER (OFFICIATING OFFICE OF GENERAL MANAGER, TELECOM DISTRICT, KASARAGODE, RESIDING AT ROOM NO.101, STAR TOURIST HOME, KASARAGODE -1.

26. P.P.BHASKARAN, S/O.SRI.K.K.NARAYAYAN, AGED 49 YEARS, ASSISTANT CHIEF ACCOUNTS OFFICER, (OFFICIATING), OFFICE OF GENERAL MANAGER, TELECOM DISTRICT, KANNUR, RESIDING AT `PRATHEEKSHA', KALLIASSERI, KANNUR.

27. A.SUBRAMANYAM, S/O.SRI.M.KARUTHAMBI, AGED 48 YEARS, CHIEF ACCOUNTS OFFICER (OFFICIATING OFFICE OF THE GENERAL MANAGER, TELECOM DISTRICT, KANNUR, RESIDING AT AMBALATHARA, PUTHUR, KANNUR.

28. T.H.BALAKRISHNAN, S/O.T.H.SANKARAN, AGED 53 YEARS, CHIEF ACCOUNTS OFFICER(OFFICIATING) OFFICE OF THE GENERAL MANAGER, TELECOM DISTRICT, KANNUR, RESIDING AT ROOM NO.8, JHUKI MEN'S HOSTEL, THAVAKKARA, KANNUR-2.

29. JOSEPH JOHN, S/O.SRI.M.L.JOHN, AGED 43 YEARS, ASSISTANT CHIEF ACCOUNTS OFFICER (OFFICIATING) OFFICE OF THE PRINCIPAL GENERAL MANAGE, BSNL, THRISSUR, RESIDING AT MAMBRAKARAN HOUSE, P.O.PERAMBRA, THRISSUR.

30. M.K.AUGUSTIN, S/O. THE LATE KURIAN MANAPPATT, AGED 45 YEARS, CHIEF ACCOUNTS OFFICER (OFFICIATING), OFFICE OF THE GENERAL MANAGER, BSNL, CALICUT, RESIDING AT 33/244-B, CHAITHANYA, KIZHAKEPAYYANAM PARAMBA, MASS CORNER, MALARAMBA, CALICUT-673 009.

31. E.P.SREEKUMAR, S/O.KUNJUNNI KIDAVE, AGED 45 YEARS, ASST. CHIEF ACCOUNTS OFFICER (OFFICIATING), OFFICE OF THE GENERAL MANAGER, BSNL. CALICUT, RESIDING AT EDAPPARAMBATH HOUSE, PO IYYAD, UNNIKULAM, CALICUT.

32. JOSE SEBASTIAN, S/O.SRI.M.J.SEBASTIAN, AGED 53 YEARS, CHIEF ACCOUNTS OFFICER(OFFICIATING) OFFICE OF THE GM, BSNL, KOTTAYAM, RESIDING AT MALAPPURATH HOUSE, AYARKUNNAM P.O., KOTTAYAM.

33. K.SUKESHINI DEVI, D/O. THE LATE V.KESAVA PILLAI, AGED 56 YEARS, CHIEF ACCOUNTS OFFICER (OFFICIATING), OFFICE OF THE GM, BSNL, KOTTAYAM, RESIDING AT `SREEPADAM', THRIPPUNITURA.

34. K.K.BALACHANDRAN, S/O.THE LATE K.K.KRISHNAN, AGED 52 YEARS, SENIOR ACCOUNTS OFFICER, OFFICE OF EXECUTIVE ENGINEER, ELECTRICAL DIVISION, BSNL, KOTTAYAM, RESIDING AT MANADIYIL HOUSE, K.S.PURAM, KADUTHURUTHY, KOTTAYAM.

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF COMMUNICATION AND INFORMATION TECHNOLOGY, DEPARTMENT OF TELECOMMUNICATIONS, 421 SANCHAR BHAVAN, 20 ASHOKA ROAD, NEW DELHI-110 001.

2. SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF FINANCE AND COMPANY AFFAIRS, DEPARTMENT OF EXPENDITURE, NEW DELHI-110 001.

3. DIRECTOR (STAFF), DEPARTMENT OF TELECOMMUNICATIONS, 421 SANCHAR BHAVAN, 20 ASHOKA ROAD, NEW DELHI-110 001.

4. BHARAT SANCHAR NIGAM LIMITED, REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR, STATESMAN BUILDING, NEW DELHI-110 001.

5. CHIEF GENERAL MANAGER,
BHARAT SANCHAR NIGAM LIMITED,
KERALA CIRCLE, THIRUVANANTHAPURAM.

6. CHIEF GENERAL MANAGER,
BHARAT SANCHAR NIGAM LIMITED,
SOUTHERN TELECOM REGION, CHENNAI.

7. CHIEF ACCOUNTS OFFICER (FC),
OFFICE OF THE CHIEF GENERAL MANAGER,
BHARAT SANCHAR NIGAM LIMITED,
KERALA CIRCLE, THIRUVANANTHAPURAM.

BY ADV. SRI.MATHEWS K.PHILIP,SC, BSNL
SRI.GEORGE KURUVILLA(ALAPPUZHA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/08/2007, ALONG WITH WPC 24950 OF 2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.20418/05

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: PHOTOCOPY OF THE OFFICE MEMORANDUM NO.2-29/2000-RESTG. DATED 30.9.2000 OF THE 1ST RESPONDNT.

EXT.P2: TRUE COPY OF THE CENTRAL CIVIL SERVICES (PENSION) AMENDMENT RULES, 2000 WHICH WAS PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY DATED 30.9.2000.

EXT.P3: TRUE COPY OF THE LETTER NO.BSL/11/SR-2001 DATED 14/1/2002 ALONG WITH THE OPTION PROFORMA AND THE GENERAL TERMS AND CONDITIONS OF THE 4TH RESPONDENT.

EXT.P4: PHOTOCOPY OF THE LETTER NO.BSNL/11/SR/2003 DATED 2/9/2003 ALONG WITH ANNEXURES I TO IV OF THE 4TH RESPONDENT.

EXT.P5: PHOTOCOPY OF THE OPTION SUBMITTED BY THE 3RD petitioner DATED 26.9.03.

EXT.P6: PHOTOCOPY OF THE ORDER NO.CCA/KRL/6-67/2003-04/95 DATED 25/2/2004 OF THE IST RESPONDENT.

EXT.P7: PHOTOCOPY OF THE OFFICE ORDER NO.1-5/2004-PAT(BSNL) DATED 18.3.2004 OF THE 4TH RESPONDENT.

EXT.P8: PHOTOCOPY OF THE OFFICE MEMORANDUM F NO.6/82/E.III (B)/91 DATED 28.2.2003 OF THE 1ST RESPONDENT.

EXT.P9: PHOTOCOPY OF THE OFFICE MEMORANDUM NO.4-20/2003-SEA DATED 1.4.2003 OF THE 4TH RESPONDENT.

EXT.P10: PHOTOCOPY OF THE OFFICE MEMORANDUM NO.16-11/2002.SEA (PART I) DATED 7.4.2004 OF THE 4TH RESPONDNT.

EXT.P11: PHOTOCOPY OF THE PAY FIXATION MEMO DATED 25.7.2003 OF THE 3RD PETITIONER.

EXT.P11(I): PHOTOCOPY OF THE PAY FIXATION MEMO DATED NIL OF THE 1ST PETITIONER.

EXT.P11(II):PHOTOCOPY OF THE PAY FIXATION MEMO DATED NIL OF the 2ND PETITIONER.

EXT.P11(III):PHOTOCOPY OF THE PAY FIXATION MEMO DATED 10.1.2005 OF THE 4TH PETITIONER.

EXT.P11(IV):PHOTOCOPY OF THE PAY FIXATION MEMO DATED NIL OF THE 5TH PETITIONER.

EXT.P11(V): PHOTOCOPY OF the PAY FIXATION MEMO DATED 7.4.2004 OF THE 6TH PETITIONER.

EXT.P11(VI): PHOTOCOPY OF THE PAY FIXATION MEMO DATED 6.4.2005 OF THE 7TH PETIITONER.

EXT.P11(VII): PHOTOCOPY OF THE PAY FIXATION MEMO NIL DATED NIL OF THE 8TH PETITIONER.

EXT.P11(VIII): PHOTOCOPY OF THE PAY FIXATION MEMO 4.2.2004 DATED OF THE 9TH PETITIONER.

EXT.P11(IX): PHOTOCOPY OF THE PAY FIXATION MEMO 31.03.2004 DATED OF THE 10TH PETITIONER.

EXT.P11(X): PHOTOCOPY OF THE PAY FIXATION MEMO 5.6.2003 DATED OF THE 11TH PETITIONER.

EXT.P11(XI): PHOTOCOPY OF THE PAY FIXATION MEMO 5.6.2003 DATED OF THE 12TH PETITIONER

EXT.P11(XII) PHOTOCOPY OF THE PAY FIXATION MEMO 22.4.2004 DATED OF THE 13TH PETITIONER.

EXT.P11(XIII): PHOTOCOPY OF THE PAY FIXATION MEMO 6.05.2003 DATED OF THE 14TH PETITIONER

EXT.P11(XIV): PHOTOCOPY OF THE PAY FIXATION MEMO 19.05.2003 DATED OF THE 15TH PETITIONER

EXT.P11(XV): PHOTOCOPY OF THE PAY FIXATION MEMO /-4-2003 DATED OF THE 16TH PETITIONER

EXT.P11(XVI): PHOTOCOPY OF THE PAY FIXATION MEMO 27.03.2004 DATED OF THE 17TH PETITIONER

EXT.P11(XVII): PHOTOCOPY OF THE PAY FIXATION MEMO 19.05.2003 DATED OF THE 18TH PETITIONER

EXT.P11(XVIII): PHOTOCOPY OF THE PAY FIXATION MEMO 5.6.2003 DATED OF THE 19TH PETITIONER

EXT.P11(XIX): PHOTOCOPY OF THE PAY FIXATION MEMO DATED 31.03.2004 OF THE 20TH PETITIONER

EXT.P11(XX): PHOTOCOPY OF THE PAY FIXATION MEMO 20.3.2004 DATED OF THE 21ST PETITIONER

EXT.P11(XXI): PHOTOCOPY OF THE PAY FIXATION MEMO 23.4.2005 DATED OF THE 22ND PETITIONER

EXT.P11(XXII): PHOTOCOPY OF THE PAY FIXATION MEMO 24.4.2003 DATED OF THE 23RD PETITIONER

EXT.P11(XXIII): PHOTOCOPY OF THE PAY FIXATION MEMO NIL DATED OF THE 24TH PETITIONER

EXT.P11(XXIV): PHOTOCOPY OF THE PAY FIXATION MEMO 26.8.2004 DATED OF THE 25TH PETITIONER

EXT.P11(XXV): PHOTOCOPY OF THE PAY FIXATION MEMO 22.4.2003 DATED OF THE 26TH PETITIONER

EXT.P11(XXVI) PHOTOCOPY OF THE PAY FIXATION MEMO 1.4.2004 DATED OF THE 27TH PETITIONER

EXT.P11(XXVII) PHOTOCOPY OF THE PAY FIXATION MEMO 3.8.2004 DATED OF THE 28TH PETITIONER

EXT.P11(XXVIII) PHOTOCOPY OF THE PAY FIXATION MEMO 22.04.2003 DATED OF THE 29TH PETITIONER

EXT.P11(XXIX) PHOTOCOPY OF THE PAY FIXATION MEMO NIL DATED OF THE 30TH PETITIONER.

EXT.P11(XXX) PHOTOCOPY OF THE PAY FIXATION MEMO DATED NIL OF THE 31ST PETITIONER

EXT.P11(XXXI) PHOTOCOPY OF THE PAY FIXATION MEMO DATED NIL OF THE 32ND PETITIONER

EXT.P11(XXXII) PHOTOCOPY OF THE PAY FIXATION MEMO DATED NIL OF THE 33RD PETITIONER

EXT.P11(XXXIII) PHOTOCOPY OF THE PAY FIXATION MEMO DATED 12.4.2004OF THE 34TH PETITIONER

EXT.P12: PHOTOCOPY OF THE LETTER NO.4-44/2004-SEA-BSNL/1 DATED 24.2.2005 OF THE 4TH RESPONDENT.

EXT.P13: PHOTOCOPY OF THE LETTER NO.78-36/2003-SU DATED 27.10.2004 OF THE 3RD RESPONDENT.

EXT.P14: PHOTOCOPY OF THE OM NO.8(1)-E.III(B)/2004 DATED 1.4.2004 OF THE MINISTRY OF FINANCE, DEPARTMENT OF EXPENDITURE, NEW DELHI.

EXT.P15: PHOTOCOPY OF THE ORDER DATED 2.8.2004 IN OA NO.2519 OF 2003 OF THE PRICNIPAL BENCH FO THE CENTRAL ADMINISTRATIVE TRIBUNAL.

EXHIBITS OF R1

EXT.R1: TRUE COPY OF THE LETTER DATED 25.2.2005 ISSUED BY THE ASSISTANT DIRECTOR GENERAL (SEA) BSNL, NEW DELHI.

//TRUE COPY//

ANTONY DOMINIC, J.

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W.P.(C) NOs. 20418 & 24950 OF 2005

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Dated this the 17th day of August, 2007

J U D G M E N T

The writ petitioners entered the service of the Department of Telecommunication as Junior Accounts Officers. They earned promotion to the post of Assistant Accounts Officer and to the higher posts of Accounts Officers, Senior Accounts Officers etc. In 1999, in pursuance to the New Telecom Policy, it was decided by the Government of India to corporatise the service providing functions of the Department and to transfer the business of providing Telecom services to the newly formed company namely Bharath Sanchar Nigam Ltd, the 4th respondent herein. Thereafter Ext.P1 office memorandum was issued by the first respondent for setting up the 4th respondent and transfer of staff etc. Ext.P1 provided interalia that the staff so deputed will be on deemed deputation, without deputation allowance w.e.f. 1st October 2000 namely the date of taking over of Telecom operations by the 4th respondent from the Department of Tele Communications. It

also provided that their pay scale, salaries and allowances of the deputationists will continue to be governed by the existing rules, regulations and orders. The deputation so granted was w.e.f. 1/10/2000. Later by Ext.P2, the Central Civil Services (Pension) Amendment Rules 2000 were introduced incorporating Rule 37 (A), which provided that on conversion of a Department of the Central Government into a Public Sector Undertaking or an autonomous body, all Government servants of that Department shall be transferred en-masse to that newly formed organisation on terms of foreign service without any deputation allowance till such time they got absorbed in the said undertaking or body, as the case may be, and such transferred Government servants shall be absorbed w.e.f. such date as may be notified by the Government. Rule 37(A) (4) provided that the permanent absorption of the Government servants as employees of the Public Sector Undertaking or autonomous body shall take effect from the date of which their options are accepted by the government and on and from the date of such acceptance, the employees shall cease to be Government servants and they shall

be deemed to have retired from Government service. Subsequent to Ext.P2, options were invited by the fourth respondent by Ext.P3 dated 14th January 2002 and the petitioners opted to be absorbed in the BSNL w.e.f. 1/10/2000. Accordingly Ext.P6 order dated 25/2/2004 was issued by the third respondent, accepting the option exercised by the petitioners,making it specific that permanent absorption shall take effect from 1/10/2000 F.N. It is evident from Ext.P6 that the acceptance of the option exercised by the petitioner, in terms of Rule 37(A)(4) is w.e.f. 1/10/2000 and that from that date petitioners ceased to be government servants and shall be deemed to have retired from Government service.

2. Subsequently, Ext.P7 was issued by the 4th respondent, introducing IDA pay scales in replacement of the existing CDA pay scales for Executive Staff of the 4th respondent effective from 1/10/2000 and Ext.P7 indicates the existing and corresponding pay scales that was introduced with effect from the aforesaid date. Still later Ext.P8 was issued stating that pay scales in the posts indicated therein and their equivalent posts in

the organized Accounts cadres existing in various ministries/departments of the Government of India may accordingly be upgraded on notional basis w.e.f. 1/1/96 with actual payments being made from 19/2/2003, the date on which the decision was approved by the Government of India. Following Ext.P8, the 4th respondent issued Ext.P9 office memorandum revising the pay scale of the staff belonging to Organized Accounts Departments in the 4th respondent on notional basis w.e.f.1/1/96 and with actual payments being made from 19/2/03. There was yet another revision of pay by Ext.P10 order issued on 7/4/04 and Ext.P11 series are the orders issued by the 4th respondent implementing Ext.P9 w.e.f. 1/1/96 and with actual payments being made from 19/2/03. It is stated that benefits of Ext.P9 have been given to the petitioners in WPC 20418/05. While they were enjoying Ext.P9, as implemented by Ext.P11 series, Ext.P12 order was issued by the 4th respondent on 24th February 2005, based on Ext.P13, informing that Exhibits P8 and P9 are not applicable in the 4th respondent. Ext.P14 is an order issued by the Government of India, which preceded even

Ext.P13 stating that the benefit of Ext.P9 is not available to the employees of organisations including the 4th respondent. Thus the net result of Ext.P13 is that the benefit enjoyed by the petitioners in implementation of Ext.P9 stood withdrawn leading to recovery of amounts already paid and the petitioners in the WPC 20418 of 2005 have filed this writ petition seeking to quash Ext.P12, P13, P14 to the extent it adversely affects the petitioners and to declare that they are entitled to the upgraded CDA pay scales in implementation of Exhibits P8, P9 and P10 and for consequential fixation of pay. They also seek a direction to the respondents not to revise pay or to recover the amount by way of over payment in the purported implementation of Ext.P12.

3. In so far as the petitioners in WPC 24950/05 are concerned, unlike the petitioners in other case, they were not extended the benefit of Ext.P8 or P9 and therefore there was no occasion for challenging any order of withdrawal. On the other hand, they are seeking a direction to extend them the benefit of Ext.P9.

4. The learned Senior Counsel for the petitioners raised

two contentions. The first is that, even if the benefit of Exhibits P8 and P9 are not available to the employees of the 4th respondent, the benefit of Ext.P9 was extended to the employees in the Organized Accounts Departments w.e.f. 1/1/96 with actual payments made from 19/2/03. According to them, they should be paid monetary benefits arising out of Ext.P9 for the period 19.2.2003 to 25.2.2004, when by Ext.P6, their option was accepted. The other contention raised by the counsel is that even if they are not entitled to the aforesaid benefit, still in implementation of Ext.P9, they are entitled to be treated as Government employees as on 1/1/96 and they are entitled to notional fixation of pay upto 1/10/2000 when they were absorbed in the service of the 4th respondent.

5. The first contention of the petitioners is based on the fact that their option for absorption in the 4th respondent w.e.f. 1/10/2000 was accepted only by Ext.P6 dated 25/2/04. It is contended that in terms of Rule 37(A)(4) of the CCS (Pension) Rules, they will cease to be Government employees only from the date of acceptance of their option by Government and therefore

until their options were accepted on 25/2/04, they were entitled to be treated as Government employees. According to him, in terms of Rule 37(A) (1) though absorption is to be effective from a date to be notified by the Central Government, their cessation as Government servant can only be from the date of acceptance of their option by Ext.P6 dated 25.2.2004. In so far as this claim is concerned, I see difficulty in accepting the claim of the petitioners. Petitioners had submitted Ext.P3 option agreeing to be absorbed in the 4th respondent w.e.f. 1/10/2000. It was Ext.P3 that was accepted by the Government of India by Ext.P6 on 25/2/04, specifying that it is with effect from 1.10.2000. Therefore even if the option exercised by the petitioners were accepted only on 25/2/04, such acceptance was w.e.f. 1/10/2000. If that be so, the monetary benefit ordered in Exhibits P8 or P9 w.e.f.19/2/03 cannot be extended to the petitioners treating them as Government employees as they had ceased to be Government employees with effect from 1/10/2000. It is true that Ext.P6, accepting their option, was issued only on 25.2.2004. Though as per Rule 37(A) (4) of the CCS (Pension)

Rules, they will cease to be Government employees only on the date on which their options were accepted, I do not find any merit in the contention that the petitioners should be deemed to be Government employees upto 25.2.2004. They had opted to be absorbed with effect from 1/10/2000, and the option so made was accepted by Ext.P4. There is also nothing in Rule 37A, prohibiting acceptance of option with retrospective effect. That apart, petitioners are not seeking a change of the effective date of option and they have accepted and enjoyed the benefits thereof. Now they want to retain the said date, and are only attempting to gain an additional monetary benefit raising a technical argument, which cannot be accepted.

6. In so far as notional benefit claimed by the petitioners for the period 1/1/96 to 1/10/2000 is concerned, it is on the basis that until then they were Government employees. On going through the pleadings in this case, I notice that petitioners in WPC No.20418/2005 have not raised any specific claim in this respect. However, in so far as petitioners in WPC 24950/05 are concerned, they have raised this claim in Ext.P17 representation,

but this has not been responded by the respondents. In view of the absence of claim in WP(C) 20418/2005 and the plea having not considered by the respondents, I leave open the petitioners claim for notional fixation for the aforesaid period. The petitioners may take up their claim in this respect with the 4th respondent and DOT.

7. Accordingly, I dispose of these writ petitions allowing the petitioners to make representations for notional fixation for the period 1.1.96 to 1.10.2000 with the 3rd and 4th respondents. If such representations are made within one month, the same shall be considered and orders will be passed by the aforesaid respondents, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment and the consequential benefits, if any, shall also be released, without delay.

Writ petitions are disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp